

ARTICLES

LINGUISTIC PROFILING IN EDUCATION: HOW ACCENT BIAS DENIES EQUAL EDUCATIONAL OPPORTUNITIES TO STUDENTS OF COLOR

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Abstract	356
I. Introduction	357
II. Accent Bias in Education Exists	358
A. Bias Against Black Speakers	359
B. Bias Against Asian Speakers	361
C. Bias Against Latina/o Speakers	362
D. Bias Against Arab Speakers	363
III. Accent Bias Negatively Affects Accented Students of Color	364
A. Accented Students Are Denied Access to Charter Schools	364
1. The Charter School System	364
2. Charter Schools and Their Admissions Criteria...	365
3. Accent Bias Can Infiltrate a Charter School's Admissions Process	366
4. Accent Bias Can Help Explain Racial Segregation Among Charter Schools.....	367
B. Accented Students in a School Are Placed in Low- Track Classes	368
1. Defining "Tracking"	368
2. Tracking Is Pervasive.....	369

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3. Accent Bias Is a Reason Why Students of Color Are Placed in Low Tracks.....	370
a. Teacher Recommendation Often Determine Track Placement	370
b. Teacher Recommendations Can Be Affected By Accent Bias	371
4. Tracking Limits the Educational Opportunities of Students of Color	372
C. Accented Students in a Classroom Are Harmed by Accent Bias	373
1. Teachers Do Not Call on Accented Students	373
2. Accented Students Are Given Lower Grades	374
3. Accented Students Are Distanced from Their Teachers	375
4. Accented Students Are Made to Question Their Identity	376
IV. Remedying Accent Bias in Education	377
A. Litigation Solutions	378
1. A 42 U.S.C. § 1983 Claim	378
2. A 20 U.S.C. § 1703 Claim	379
B. Other Solutions	380
1. Using Teaching Practices That Overcome Accent Barriers	380
2. Instituting Anti-Accent Bias Teacher Training Programs.....	381
3. Drafting School Policies That Prohibit Accent Discrimination	382
4. Re-Perceiving Accent	383
V. Conclusion	383

ABSTRACT

Students of color have to contend with numerous obstacles in education including the “accent bias” obstacle. Accent bias exists in K-12 education. Just as accent bias is found in the workplace, it is also found in the classroom. Studies reveal that accent bias affects a range of speakers including Black, Asian, Latina/o, and Arab speakers. Accent bias harms students in numerous ways including denying them access to charter schools, access to high-track classes, and access to full classroom participation. Both litigation-based and school-based solutions are needed to remedy accent bias in order to ensure equal educational opportunities for all students.

"[A]ll men are created equal"

—Declaration of Independence (1776)¹

"Most governments have been based . . . on the denial of equal rights Ours began by affirming those rights."

—Abraham Lincoln (1854)²

I. INTRODUCTION

Paeans to American equality are common as illustrated by the above quotations. But in education, equality is still merely aspirational for students of color because they encounter a multitude of educational obstacles ranging from cultural stereotypes to underfunded schools to lack of role models.³ Regrettably, another obstacle they face is accent bias by educators.

Accent bias occurs because people evaluate others based not only on how they look (appearance), but also on how they sound (speech).⁴ "Accent" refers to *pronunciation* differences.⁵ Another way of defining accent is to say that those in power are perceived as speaking "normal, unaccented English" and any speech that differs is called an accent.⁶ The reality, however, is that everyone speaks with an accent.⁷ But those in the minority who are perceived as sounding different are discriminated against.⁸ Accent bias can be conscious, but more often it is unconscious.⁹ Accent bias occurs not only in the workplace,¹⁰ but also in the school-

1. THE DECLARATION OF INDEPENDENCE para. 2 (U.S. 1776).

2. JIM CULLEN, *THE AMERICAN DREAM: A SHORT HISTORY OF AN IDEA THAT SHAPED A NATION* 86 (2004) (quoting Lincoln's personal notes).

3. See Theresa Glennon, *Race, Education and the Construction of a Disabled Class*, 1995 WIS. L. REV. 1237, 1299-1300, 1318 (describing significant obstacles faced by minority students in classrooms). Although the levels of blatant and intentional racism have declined, many schoolchildren must overcome the lingering effects of racism that permeate every structure and system in politics, culture, and the economy. *Id.*

4. Megumi Hosoda et al., *Listeners' Cognitive and Affective Reactions to English Speakers with Standard American English and Asian Accents*, 104 PERCEPTUAL & MOTOR SKILLS 307, 307 (2007).

5. Dialect refers not only to pronunciation, but also to vocabulary and grammar differences. WALT WOLFRAM ET AL., *DIALECTS IN SCHOOLS AND COMMUNITIES* 4-5 (1999).

6. Mari J. Matsuda, *Voices of America: Accent, Antidiscrimination Law, and a Jurisprudence for the Last Reconstruction*, 100 YALE L.J. 1329, 1361 (1991).

7. *Id.* at 1329.

8. *Id.* at 1361.

9. *Id.* at 1352; see also Ray Lou, *Teaching All Students Equally*, in *TEACHING FROM A MULTICULTURAL PERSPECTIVE* 28, 35 (Peter Labella & Diana E. Axelsen eds., 1994) (asserting that a professor's teaching style "may be unconsciously . . . biased against a group of students in the class").

10. Natalie Prescott, *English Only at Work, Por Favor*, 9 U. PA. J. LAB. & EMP. L. 445, 488 (2007). Accent researchers reported that employers were willing to admit that they

room where accented students encounter accent bias from teachers and other school personnel.¹¹

Such "linguistic profiling"¹² denies accented students of color equal educational opportunities and presents another barrier to their educational advancement. Whereas "racial profiling" is based on visual cues, "linguistic profiling" is based upon auditory cues.¹³ Listeners may use these auditory cues to identify an individual as belonging to a racial subgroup and to draw racial inferences.¹⁴

This Article reveals how accented students of color in public primary and secondary schools (K-12 classes) encounter accent bias in the field of public education. Even slight speech variations resulting from accent differences can conjure up racial stereotypes and produce discriminatory effects. A student need not speak a language different from English to encounter bias; it is sufficient for a student to speak English with an accent to encounter bias. Part II examines studies showing bias against a range of accents. Part III explains how educators' accent bias harms accented students of color. Part IV discusses some solutions to accent bias in education.

II. ACCENT BIAS IN EDUCATION EXISTS

Accent bias exists in the field of education.¹⁵ An occurrence of accent bias is recounted in a dissertation research study, in which a Mexican-American high school student revealed "that her English teacher made fun of her accent during the class period" and the "teasing from this teacher had become so commonplace that other students appeared to just

judge prospective employees by their accents and require employees to speak English only at work. *Id.*

11. JAMES RYAN, *RACE AND ETHNICITY IN MULTI-ETHNIC SCHOOLS* 173 (1999).

12. "Linguistic profiling is based upon auditory cues that may be used to identify an individual as belonging to a linguistic subgroup within a given speech community, including a racial subgroup." John Baugh, *Racial Identification by Speech*, 75 *AM. SPEECH* 362, 363 (2000).

13. *Id.*

14. *Id.* at 362-63.

15. Cecilia E. Ford, *The Influence of Speech Variety on Teachers' Evaluations of Students with Comparable Academic Ability*, 18 *TESOL Q.* 25, 26-27 (1984). Ford explains:

[W]ork in education and psychology has pointed to a relationship between student achievement and teacher expectation. Such research has demonstrated that teachers' perceptions may be cued by subjective impressions—impressions that bear relationship to such factors as student speech style, race, and social class.

Id. at 27.

accept it.”¹⁶ Another example of language bias is captured by the following comment from a teacher:

These poor kids [from Puerto Rico] come to school speaking a hodge podge. They are all mixed up and don't know any language well. As a result, they can't even think clearly. That's why they don't learn. . . . It is 'good' English which has to be the focus.¹⁷

These examples reveal that teachers can possess accent bias against students of color. The studies discussed below reveal that such bias exists against a wide range of speakers including African-American, Asian-American, Arab-American, and Latina/o speakers.

A. *Bias Against Black Speakers*

A 1971 study examined the responses of White college seniors (planning to be English teachers) after they listened to a tape of ten Black and White speakers reading an identical passage.¹⁸ The speakers were rated on “education, intelligence, . . . and speaking ability.”¹⁹ For these three categories, the White subjects rated the Black non-standard English speakers the lowest, while rating the White standard English speakers the highest.²⁰

In a 1974 study, White teachers rated “answers spoken by [B]lack students as inferior to the content of answers spoken by White students.”²¹ In this study, sixty-two White teachers listened to tapes of Black and White ninth-grade boys providing answers to two questions: “Why do we celebrate Thanksgiving?” and “What is the difference between a discovery and an invention?”²² The White teachers “judged the content of an-

16. Mary Pyron, “I Hear You, but I Don't Understand You”: The Effects of Peer Tutoring for Helping Secondary ESL Students Achieve Academic Success 95 (May 2007) (unpublished Ph.D. dissertation, Louisiana State University), *available at* <http://etd.lsu.edu/docs/available/etd-01102007-171455/unrestricted/pyrondissertation.pdf>.

17. CATHERINE E. WALSH, *PEDAGOGY AND THE STRUGGLE FOR VOICE: ISSUES OF LANGUAGE, POWER, AND SCHOOLING FOR PUERTO RICANS* 106 (1991).

18. Nancy Hewett, *Reactions of Prospective English Teachers Toward Speakers of a Non-Standard Dialect* 4–7 (Mar. 7, 1971) (paper presented at the Fifth Annual Teachers of English to Speakers of Other Languages Convention), *available at* http://www.eric.ed.gov/ERICDocs/data/ericdocs2sql/content_storage_01/0000019b/80/37/2d/a7.pdf.

19. *Id.* at 10 (emphasis omitted).

20. *Id.* at 15. In the study, “[s]tandard English speakers” used “the structure and phonology used on the national radio and television networks.” *Id.* “Non-standard English speakers” used “all other varieties of English . . . including the variety often referred to as ‘educated [S]outhern speech.’” *Id.* at 1 n.1.

21. Thomas K. Crowl & Walter H. MacGinitie, *The Influence of Students' Speech Characteristics on Teachers' Evaluations of Oral Answers*, 66 J. EDUC. PSYCHOL. 304, 307 (1974).

22. *Id.* at 305.

swers spoken by [B]lack students as inferior to the content of answers spoken by [W]hite students.”²³ But as the researchers stated, “[s]uch a judgment is, by definition, erroneous since the verbal content of [B]lack students’ and [W]hite students’ answers was the same.”²⁴

In a 1977 study, researchers obtained speech samples from Black and White third-graders.²⁵ The speech samples were played to preschool and primary school teachers who then rated the speakers.²⁶ Comparisons of the ratings “indicated that the [B]lack speakers as a group were rated lower than [W]hite speakers”²⁷ The study indicated that the teachers were “strongly influenced” by the speech patterns of the children and that the teachers focused “less on *what* a child said and more on *how* the child said it.”²⁸

In a 1978 study, White elementary school teachers who heard taped responses from Black and White fifth-graders rated students who spoke Black English “as having less academic ability than [standard English-speaking] students.”²⁹

These negative views of Black English speakers was confirmed in a more recent 1997 study involving high school teachers who filled out a survey on language attitudes.³⁰ The study revealed that although a sub-

23. *Id.* at 307.

24. *Id.*

25. Robert C. Granger et al., *Teacher Judgments of the Communication Effectiveness of Children Using Different Speech Patterns* 6 (Apr. 1977) (paper presented at the Annual Meeting of the American Educational Research Association), available at http://www.eric.ed.gov/ERICDocs/date/ericdocs2sq1/content_storage_01/00000196/80/39/d9/17.pdf.

26. *Id.* Nine of the teachers were Black and forty-seven were White. *Id.*

27. *Id.* at 7. The twelve participating students were divided into groups based on race, and then further divided within those groups based on socioeconomic class. *Id.* The results showed a negligible difference in results between Black and White students within the lower socioeconomic bracket, but there were significant deviations between the middle-class Blacks and Whites. *Id.*

28. *Id.* at 8 (emphasis in original).

29. Debra Kanai DeMeis & Ralph R. Turner, *Effects of Students’ Race, Physical Attractiveness, and Dialect on Teachers’ Evaluations*, 3 CONTEMP. EDUC. PSYCHOL. 77, 84 (1978). The study evaluated Black and White students based on physical attractiveness and speech style (i.e., whether the students spoke standard English or “Black English”). *Id.* at 77. “Sixty-eight, [W]hite, elementary school teachers listened to each student’s response and rated that student in terms of personality, quality of response, and current and future academic ability.” *Id.* The results indicated that teachers reacted to characteristic combinations differently, but there was a significant difference in how Black and White students were perceived. *Id.* at 84.

30. Renée Blake & Cecilia Cutler, *AAE and Variation in Teachers’ Attitudes: A Question of School Philosophy?*, 14 LINGUISTICS & EDUC. 163, 163 (2003) (explaining that the goal of this study was to examine the attitudes of teachers who teach in large cities containing a “linguistically diverse population”). The study came immediately after the Oakland

stantial number of the teachers viewed “African-American English” (AAE) as a legitimate dialect, they also “generally considered [AAE] inappropriate for the classroom, and moreover, unprofitable for its speakers.”³¹

B. *Bias Against Asian Speakers*

Several studies reveal Asian accent bias. In a 2002 study surveying Chinese-Americans in Los Angeles, California, about thirteen percent of the participants responded that they had experienced racial bias when asked, “Now thinking over your whole life, have you ever been treated unfairly or badly because you speak a different language or you *speak with an accent*?”³²

A 2007 study of accented speech found that male and female Southeast Asian accents were rated “Least Positive” under the “Educated” category, whereas the male Eastern European accent was rated “Most Positive” under the same category.³³

Another 2007 study also found Asian accent bias.³⁴ This study required college students to listen to a tape of standard American-accented English and Asian-accented English being spoken.³⁵ The Asian-accented English speakers were viewed as “less able to communicate well.”³⁶ Also, the subjects reported experiencing more “negative affect” after listening to Asian-accented English speakers.³⁷ “Negative affect” refers to reactions such as “anxiety, uneasiness, and discomfort.”³⁸ Further, the researchers found that the Asian-accented English speakers were “*not* rated as being more intellectually competent,” even though the research-

School Board passed a resolution recognizing “African-American English,” or AAE, as the primary language of the district’s African-American students. *Id.* at 164–65. The resolution directed teachers to take into consideration AAE when teaching students reading and language arts. *Id.* at 164. The resulting public dismay reflected widespread misperceptions about AAE as an authentic dialect of American English. *Id.*

31. *Id.* at 188.

32. Sharon G. Goto et al., *Strangers Still? The Experience of Discrimination Among Chinese Americans*, 30 J. COMMUNITY PSYCHOL. 211, 216 (1981) (emphasis added).

33. Selim Ben Said, *The Perception of Arab-Accented Speech by American Native Speakers and Non-Native Speakers from East and South-East Asia*, in PERSPECTIVES ON ARABIC LINGUISTICS XXI: PAPERS FROM THE TWENTY-FIRST ANNUAL SYMPOSIUM ON ARABIC LINGUISTICS 149, 161 (Dilworth B. Parkinson ed., 2007).

34. Megumi Hosoda et al., *Listeners’ Cognitive and Affective Reactions to English Speakers with Standard American English and Asian Accents*, 104 PERCEPTUAL & MOTOR SKILLS 307, 312–13 (2007).

35. *Id.* The ethnic composition of the college students was 39% Asian, 23% Euro-American, 18% Hispanic-American, 4% African-American, and 15% mixed ethnicity. *Id.*

36. *Id.* at 318.

37. *Id.* at 319.

38. *Id.* at 311.

ers hypothesized they would be because of racial stereotypes of Asians as “intelligent” and “hard-working.”³⁹

C. *Bias Against Latina/o Speakers*

A 1981 study found that listeners gave lower ratings to Mexican-American speakers with a high degree of accent.⁴⁰ In the study, Mexican-American and White high school students evaluated Mexican-American speakers of English.⁴¹ “[S]peakers with lower degrees of accent tended to receive higher *status* scores than those with higher degrees of accent.”⁴² The status scores measured four categories: “educated—uneducated, wealthy—poor, successful—unsuccessful, and intelligent—unintelligent.”⁴³ The study found that the level of “accentedness” was inversely proportional to the status rating—the greater the Mexican-American speaker’s accent, the lower the status rating for that speaker.⁴⁴

A 1984 study found that teachers gave lower ratings to students speaking Spanish-influenced English than students speaking non-Spanish-influenced English.⁴⁵ “[T]he Spanish-influenced speakers were rated lower than the non-Spanish-influenced speakers in intelligence, effectiveness of communication, confidence, ambition, pleasantness, and relative quality as students”⁴⁶ This study involved forty teachers and teacher trainees consisting of eight Hispanics and thirty-two non-Hispanics evaluating different speech samples and comparable written work from elementary school students.⁴⁷ Despite evidence of comparable written work, the teachers rated the Spanish-influenced English speakers lower and the

39. Megumi Hosoda et al., *Listeners’ Cognitive and Affective Reactions to English Speakers with Standard American English and Asian Accents*, 104 PERCEPTUAL & MOTOR SKILLS 307, 311, 318 (2007) (emphasis added).

40. Eileen M. Brennan & John Stephen Brennan, *Accent Scaling and Language Attitudes: Reactions to Mexican American English Speech*, 24 LANGUAGE & SPEECH 207, 219 (1981).

41. *Id.* at 213. The students were divided into two groups: one with more Whites than Mexican-Americans and the other with more Mexican-Americans than Whites. *Id.* at 212. The students were instructed to write down “any number appropriate for the amount of accentedness in the speech” of a speaker, and to score the next speaker in relation to how he or she sounded when compared to the one before. *Id.* at 212–13.

42. *Id.* at 213 (emphasis added).

43. *Id.* at 212.

44. *Id.* at 217.

45. Cecilia E. Ford, *The Influence of Speech Variety on Teachers’ Evaluations of Students with Comparable Academic Ability*, 18 TESOL Q. 25, 32 (1984). “The study was designed to examine the stereotypes that teachers in areas with high Hispanic populations may have of children whose English speech shows the influence of Spanish phonology.” *Id.* at 33.

46. *Id.* at 33.

47. *Id.* at 32.

non-Spanish-influenced English speakers higher.⁴⁸ The study concluded that teachers seem to view students' speech variations as "reflecting deficiency in intelligence, rather than as the natural linguistic result of particular social contexts."⁴⁹

D. *Bias Against Arab Speakers*

A 1994 study found accent bias toward Arabic-accented speech.⁵⁰ The subjects were drawn from the freshman classes of Florida State University (with a largely Anglo-American student body), Florida A. & M. University (with a largely African-American student body), and Tallahassee Community College (with a diverse student body).⁵¹ The study showed that the subjects had a negative reaction to accented speech, and of the three accents—German, Spanish, and Arabic—the Arabic-accented speech was rated the lowest.⁵²

A 2007 study also found accent bias against Arabic-accented speech.⁵³ The subjects included undergraduate native and non-native speakers of English from a Midwestern American university who heard Arabic-accented English speakers "read a short passage about the geographic location of the [United States]."⁵⁴ The study revealed that the "Eastern European [m]ale accent garnered the highest evaluations," whereas the

48. *Id.* at 35 & tbl. 3.

49. *Id.* at 38. "[T]hese stereotyped expectations can seriously harm the students on whom they are projected." *Id.*

50. Ruth Johnson & Frederick L. Jenks, Native Speakers' Perceptions of Nonnative Speakers: Related to Phonetic Errors and Spoken Grammatical Errors 23–25 (Mar. 1994) (paper presented at the Annual Meeting of the Teachers of English to Speakers of Other Languages), available at http://www.eric.ed.gov:80/ERICDocs/data/ericdocs2sql/content_storage_01/0000019b/80/15/cd/33.pdf.

51. *Id.* at 13–14. The three higher-learning institutions, all located in Tallahassee, Florida, were chosen largely due to their representation of different populations within Florida. *Id.* at 13. Based upon the demographics of these schools, the sample test group would include "a fair representation of the adult student population." *Id.* at 14.

52. *Id.* at 24–25. Native speakers of English were asked to evaluate eight speech samples, four of which contained phonetic errors and four of which contained grammatical errors. *Id.* at 25. Initially, Spanish-accented speech was projected to rate the lowest among the speech samples, but the Spanish accent was rated equal to the German accent, just below native English speech and above the Arabic accent. *Id.* at 26. This result could stem from the fact that Spanish and German share Indo-European origins with English, while Arabic has a Semitic origin. *Id.* at 25.

53. Selim Ben Said, *The Perception of Arab-Accented Speech by American Native Speakers and Non-Native Speakers from East and South-East Asia*, in PERSPECTIVES ON ARABIC LINGUISTICS XXI: PAPERS FROM THE TWENTY-FIRST ANNUAL SYMPOSIUM ON ARABIC LINGUISTICS 149, 149 (Dilworth B. Parkinson ed., 2007).

54. *Id.* at 152–53. There were two groups of students selected to listen to the Arabic-accented speakers: one made up of native English speakers and one made up of students from Taiwan, Thailand, South Korea, Japan, and China, selected primarily because of their

Arabic accent received low evaluations.⁵⁵ For example, under the “Pleasant” category, the subjects rated the Arabic male accent as the least positive.⁵⁶ Under “Warm,” the subjects rated the Arabic male and female accents as the least positive.⁵⁷ Under “Friendly,” the subjects rated the Arabic female accent as the least positive.⁵⁸

III. ACCENT BIAS NEGATIVELY AFFECTS ACCENTED STUDENTS OF COLOR

Accent bias in education impairs accented students in several ways. First, accented students can be denied access to charter schools and instead limited to neighborhood schools. Second, accented students can be denied access to “high-performing” classes and instead “tracked” into “low-performing” classes. Third, accented students can be distanced from their teachers.

A. *Accented Students Are Denied Access to Charter Schools*

Charter schools improperly deny admission to accented students when the admission process is tainted because of accent bias in *teacher recommendations* and *student interviews*. The discussion below analyzes charter schools and their admissions criteria, how accent bias can infiltrate the admissions process through teacher recommendations and student interviews, and how accent bias can further racial stratification in charter schools.

1. The Charter School System

The charter school system is intended to give parents and students more educational choices by “expanding the number of high-quality charter schools available to students across the [n]ation . . .”⁵⁹ These schools are “public schools of choice” that offer or are perceived as offering “different or better quality service.”⁶⁰ They are “alternatives” to regular

prominence in the university in which the experiment was conducted. *Id.* at 152. The eight speakers were from Arabic-speaking and other Middle Eastern countries. *Id.* at 153.

55. *Id.* at 164.

56. *Id.* at 162.

57. *Id.*

58. Selim Ben Said, *The Perception of Arab-Accented Speech by American Native Speakers and Non-Native Speakers from East and South-East Asia*, in PERSPECTIVES ON ARABIC LINGUISTICS XXI: PAPERS FROM THE TWENTY-FIRST ANNUAL SYMPOSIUM ON ARABIC LINGUISTICS 149, 162 (Dilworth B. Parkinson ed., 2007).

59. 20 U.S.C. § 7221(3) (2006).

60. Christopher Lubienski & Peter Weitzel, *Choice, Integration, and Educational Opportunity: Evidence on Competitive Incentives for Student Sorting in Charter Schools*, 12 J. GENDER, RACE & JUST. 351, 354 (2009). Charter schools are usually rated higher in terms

public schools.⁶¹ To help students learn about and attend charter schools, federal law requires federally supported school districts to ensure students are “informed about the charter school” and “given an equal opportunity to attend the charter school.”⁶²

2. Charter Schools and Their Admissions Criteria

When a charter school is filled to capacity, admission is based on a lottery system,⁶³ which appears to be a fair system. But this is not so, as Professor DeJarnatt points out, when “[t]he key is that the lottery functions *after* the parent has run the application gauntlet.”⁶⁴ Based on Professor DeJarnatt’s own experiment testing the admissions process of five charter schools, the “application gauntlet” can include missing admissions information on the charter school website, numerous calls before speaking with a person on the phone, mandatory attendance at an open house, *reference letters*, and *testing* of the prospective student.⁶⁵

Reference letters (from teachers) and testing (in the form of student interviews) can, when tainted by accent bias, limit accented students’ admission to charter schools despite federal law’s “equal opportunity” language. But the laws of various states permit such admissions limitations. For example, Pennsylvania and New Jersey laws allow charter schools to “establish *reasonable criteria* to evaluate prospective students”⁶⁶

of quality of education because students are free to choose the school they attend, which makes it difficult for struggling schools to continue under the same educational scheme. *Id.*

61. INST. OF EDUC. SCI., U.S. DEP’T OF EDUC., *AMERICA’S CHARTER SCHOOLS: RESULTS FROM THE NAEP 2003 PILOT STUDY 2* (2004), <http://nces.ed.gov/nationsreportcard/pdf/studies/2005456.pdf>.

62. 20 U.S.C. § 7221b(b)(3)(I)(i)-(ii) (2006).

63. 20 U.S.C. § 7221i(1)(H) (2006) (defining charter schools as schools “that admit students on the basis of a lottery, if more students apply for admission than can be accommodated”).

64. Susan L. DeJarnatt, *The Myths of School Choice: Reflections on the Two-Income Trap*, 4 RUTGERS J.L. & PUB. POL’Y 94, 126 n.116 (2006) (emphasis added) (detailing the various methods charter schools may use to screen applicants for admission).

65. *Id.* Charter schools employ simple tactics such as not answering phone calls and ignoring information requests to force parents to showcase their determination to attend the school. *Id.* at 126. This application process is especially frustrating and burdensome for disempowered groups, particularly special needs children who must rely on charter schools for adequate education. *Id.*

66. N.J. STAT. ANN. § 18A:36A-7 (West 1996) (emphasis added). In New Jersey, a charter school’s admission policies or practices may not discriminate against prospective students based on their “proficiency in the English language,” but a charter school may limit the students it admits based on grade level or certain areas of concentration. *Id.*; 24 PA. CONS. STAT. § 17-1723-A(b)(2) (2008) (emphasis added). Pennsylvania also requires that a charter school may “not discriminate in its admission policies or practices on the basis of . . . proficiency in the English language.” *Id.* § 17-1723-A(b)(1). But a charter

Delaware law allows charter schools to give preference to students “who have a *specific interest* in the school’s teaching methods, philosophy, or educational focus”⁶⁷ Florida law allows charter schools to limit admission to “[s]tudents who meet reasonable academic, artistic, or *other eligibility standards* established by the charter school”⁶⁸

Given these laws, some charter schools have imposed admission limitations including requiring reference letters from educators and testing in the form of student interviews. One Delaware charter school, mirroring the language of the Delaware law above, seeks students who have “a *specific interest* in the [s]chool’s teaching methods, philosophy or educational focus,” and then finds such “specific interest” students through teacher recommendations and an interview conducted by . . . three . . . [f]aculty [m]embers.”⁶⁹ Another Delaware charter school mandates an interview attended by the prospective student and his or her parents.⁷⁰ One Massachusetts charter school also requires participation in an interview conducted by school staff.⁷¹

3. Accent Bias Can Infiltrate a Charter School’s Admissions Process

Requiring reference letters or student interviews or both for admission seems reasonable. But a problem occurs when reference letters and student interviews are tainted by accent bias. For example, a teacher’s own accent bias could lead to a substandard recommendation letter (or no letter at all) for an accented student of color. Such a scenario is possible based on research studies showing listeners rating non-standard English speakers lower in intelligence, such as the 1971 study in which White subjects rated the Black non-standard English speakers lowest and the White

school may limit the admission of students to a certain grade level, a particular group of at-risk students, and by certain areas of concentration. *Id.* The charter school must also outline in its charter the criteria used to assess the prospective students. *Id.*

67. DEL. CODE ANN. tit. 14, § 506(b)(3)(c) (2008) (emphasis added). The “specific interest” language can potentially leave room for accent bias, even though the statute explicitly prohibits discrimination.

68. FLA. STAT. § 1002.33(10)(e)(5) (2009) (emphasis added). Even though a charter school has discretion to outline its own eligibility standards, these standards must not be discriminatory. *Id.*

69. The Charter School of Wilmington Admissions Policy, <http://www.charterschool.org/admissions/admissionsPolicy.htm> (last visited Dec. 7, 2009) (emphasis added).

70. Kuumba Academy Charter School—Application Process, <http://www.kuumbaacademycharter.com/content/view/30/42/> (last visited Dec. 7, 2009).

71. New Leadership Charter School Admissions, <http://www.spsnlcs.homestead.com/Admissions.html> (last visited Dec. 7, 2009).

standard English speakers highest under the “Intelligence” category.⁷² A teacher’s perception of an accented student as intellectually inferior could lead to a mediocre recommendation later, thus placing the accented student at a disadvantage in a competitive field.

Also, accent bias can hurt the accented student during an interview with the charter school interview team, which often consists of teachers.⁷³ Teachers (and others) on interview teams are susceptible to accent bias. Accent bias could lead the interviewers to perceive the accented students as less capable and less intelligent than the standard English-speaking students. This translates into “poor” interviews for accented students and “good” interviews for standard English-speaking students, with accented students ultimately being denied access to charter schools.

4. Accent Bias Can Help Explain Racial Segregation Among Charter Schools

There is racial segregation among charter schools. One 1999 study found that Arizona charter schools are “significantly more segregated than traditional public schools” and “typically [twenty] percentage points higher in White enrollment than the other [public schools].”⁷⁴ A 2000 study found “evidence of ethnic/racial stratification among charter schools in Arizona, California, and Michigan,” three states that enroll over half of all U.S. charter school students.⁷⁵

Accent bias can be a factor accounting for this racial/ethnic stratification. As noted by one charter school study, “There is some concern that *selective admissions policies* could contribute to racial imbalance among schools.”⁷⁶ Selective admissions policies allow admissions officials to “cherry pick” their desired students while rejecting “those with *learning*

72. Nancy Hewett, Reactions of Prospective English Teachers Toward Speakers of a Non-Standard Dialect 15 (Mar. 7, 1971) (paper presented at the Fifth Annual Teachers of English to Speakers of Other Languages Convention), http://www.eric.ed.gov/ERICDocs/data/ericdocs2sql/content_storage_01/0000019b/80/37/2d/a7.pdf.

73. See, e.g., The Charter School of Wilmington, Admissions Policy, <http://www.charterschool.org/admissions/admissionsPolicy.htm> (last visited Dec. 7, 2009) (“Students seeking admission must attend an interview conducted by a panel of three . . . [f]aculty [m]embers.”).

74. Casey D. Cobb & Gene V. Glass, *Ethnic Segregation in Arizona Charter Schools*, 7 EDUC. POL’Y ANALYSIS ARCHIVES 1 (1999), <http://epaa.asu.edu/epaa/v7n1/>.

75. Casey D. Cobb et al., Abstract, The U.S. Charter School Movement and Ethnic Segregation 3 (Apr. 2000) (paper presented at the American Educational Research Association annual meeting), available at http://www.eric.ed.gov/ERICDocs/data/ericdocs2sql/content_storage_01/0000019b/80/16/7d/e3.pdf.

76. Casey D. Cobb & Gene V. Glass, *Ethnic Segregation in Arizona Charter Schools*, 7 EDUC. POL’Y ANALYSIS ARCHIVES 1 (1999), <http://epaa.asu.edu/epaa/v7n1/> (emphasis added).

difficulties, physical disabilities, or social problems.”⁷⁷ Admissions officials could equate “learning difficulties” with “accent,” as indicated, for example, by the 1984 study that found that speakers with a Spanish accent were rated lower by teachers than students without a Spanish accent based on the criteria of intelligence and effectiveness of communication.⁷⁸ Biased admissions officials would then reject accented students of color, thereby creating racially stratified charter schools.⁷⁹

B. *Accented Students in a School Are Placed in Low-Track Classes*

In addition to being denied access to certain charter schools, accented students of color can also be denied access to certain classes. This is “tracking,”⁸⁰ a widely used student placement scheme that limits perceived low-performing students to low-track classes.⁸¹

1. Defining “Tracking”

“Tracking” is the process of classifying students as fast, average, or slow learners⁸² and then placing them in “high-track” or “low-track” classes.⁸³

77. Paul Finkelman, *School Vouchers, Thomas Jefferson, Roger Williams, and Protecting the Faithful: Warnings from the Eighteenth Century and the Seventeenth Century in the Danger of Establishments to Religious Communities*, 2008 BYU L. REV. 525, 533 (emphasis added).

78. Cecilia E. Ford, *The Influence of Speech Variety on Teachers' Evaluations of Students with Comparable Academic Ability*, 18 TESOL Q. 25, 33 (1984). The study asked teachers to evaluate Spanish-accented and non-Spanish-accented students based on characteristics of: “student (good/poor), social status, ambition, pleasantness, intelligence, effectiveness of communication, and confidence.” *Id.* at 31–32.

79. *Id.* at 33.

80. Another term for “tracking” is “ability-grouping.” Tonya L. Nelson, *Tracking, Parental Education, and Child Literacy Development: How Ability Grouping Perpetuates Poor Education Attainment Within Minority Communities*, 8 GEO. J. ON POVERTY L. & POL’Y 363, 364 (2001). The practice of tracking consists of educators placing students into a particular academic curriculum based upon the educator’s perception of the students’ abilities. *Id.* First developed in the early part of the twentieth century, tracking fell into disuse by the 1930s after research emerged that revealed “homogeneous grouping by perceived ability did not accelerate achievement.” *Id.* at 364–65. Southern schools began using tracking once again in the 1950s in an attempt to prevent Whites and Blacks from being in the same classroom. *Id.* at 365.

81. Jeannie Oakes & Gretchen Guiton, *Matchmaking: The Dynamics of High School Tracking Decisions*, 32 AM. EDUC. RES. J. 3, 28 (1995).

82. JEANNIE OAKES, *KEEPING TRACK: HOW SCHOOLS STRUCTURE INEQUALITY* 3 (2d ed. 2005).

83. ANNE WHELOCK, *ALTERNATIVES TO TRACKING AND ABILITY GROUPING* 1 (1994). The tracking process usually “involv[es] educators’ judgments of students’ intellectual abilities.” *Id.* Many tracking supporters argue that this practice makes teaching easier, since having heterogeneous classes may present an educator with the exhausting task of balancing each student’s varying academic capabilities. *Id.* at 5. But the grouping pro-

These tracking placement decisions can be based on student test scores that are presumably neutral,⁸⁴ but they are often based on other criteria more susceptible to accent bias, such as teacher recommendations.⁸⁵

2. Tracking Is Pervasive

Tracking is widespread in the U.S. school system.⁸⁶ Professor Jeannie Oakes's examination of research data for twenty-five junior and senior high schools found that twenty-four schools tracked their students.⁸⁷ A Department of Education study of eighth-grade math and science classes found that "[e]ighth-grade students of different abilities are typically divided into different classrooms"⁸⁸

But another Department of Education study found that, based on self-reporting surveys from 912 public high schools, "only [fifteen] percent of schools described themselves as having traditional 'tracking' policies"⁸⁹ This low number, however, can be explained by the fact that the tracking practices of schools are often hidden. In Professor Oakes's research, of the twenty-four schools she found using tracking, only one produced a formal policy statement on tracking.⁹⁰ In another school that did not have a formal policy statement on tracking, Professor Oakes found

cess erroneously institutionalizes the belief that only some students are equipped to fully benefit from a particular educational opportunity. *Id.* at 6.

84. So-called "objective" admission tests might not be objective. These tests are arguably "culturally biased in favor of wealthy, White students." Amy Stuart Wells & Irene Serna, *The Politics of Culture: Understanding Local Political Resistance to Detracking in Racially Mixed Schools*, in *FACING RACISM IN EDUCATION* 145, 159 (Sonya L. Anderson et al. eds., 3d ed. 2004). Also, the scores from these tests may not always be counted equally, as wealthy, White students with low scores are sometimes placed in high tracks, whereas non-wealthy and non-White students with high scores are sometimes placed in low tracks. *Id.* (citation omitted).

85. JEANNIE OAKES, *KEEPING TRACK: HOW SCHOOLS STRUCTURE INEQUALITY* 3 (2d ed. 2005). For example, a study revealed that some high schools have an informal tracking system in which educators guide their students into placement during class registration based on their perceptions of "who [was] presumed to be college bound." *Id.* at 48.

86. John A. Powell, *The Tensions Between Integration and School Reform*, 28 *HASTINGS CONST. L.Q.* 655, 691 (2001).

87. JEANNIE OAKES, *KEEPING TRACK: HOW SCHOOLS STRUCTURE INEQUALITY* 44 (2d ed. 2005).

88. NAT'L CTR. FOR EDUC. STATISTICS, U.S. DEP'T OF EDUC., *PURSUING EXCELLENCE: A STUDY OF U.S. EIGHTH-GRADE MATHEMATICS AND SCIENCE TEACHING, LEARNING, CURRICULUM, AND ACHIEVEMENT IN INTERNATIONAL CONTEXT* (1997), <http://nces.ed.gov/pubs97/timss/97198-8.asp>.

89. NAT'L CTR. FOR EDUC. STATISTICS, U.S. DEP'T OF EDUC., *CURRICULAR DIFFERENTIATION IN PUBLIC HIGH SCHOOLS* (1994), <http://nces.ed.gov/pubs95/95360.pdf>.

90. JEANNIE OAKES, *KEEPING TRACK: HOW SCHOOLS STRUCTURE INEQUALITY* 43-44 (2d ed. 2005) (noting that schools often conceal the natures of their tracking programs in order to avoid conflict over grouping methods).

that tracking was used but tracking records were not kept and parents were not told of the tracking system because of the controversy surrounding the method.⁹¹ The fact that tracking is pervasive makes accent bias a significant concern because many tracking placement decisions are made by teachers and others who are susceptible to accent bias.

3. Accent Bias Is a Reason Why Students of Color Are Placed in Low Tracks

Students of color are more likely to be placed in lower tracks,⁹² and accent bias can help explain why. Track placement of students is often determined by recommendations from teachers and other school personnel who are susceptible to accent bias.

a. Teacher Recommendations Often Determine Track Placement

Track placement is often determined by recommendations from those who are subject to accent bias, such as teachers, department heads, principals, or guidance counselors.⁹³ The following studies reveal the importance of educators' recommendations in track placement decisions. In one study of five urban high schools, one school placed students in honors classes based on the criteria developed by the English department chair, whose admission criteria changed over the years from reading test scores to guidance counselor recommendations to teacher recommendations.⁹⁴ In another study of three high schools, researchers found that the schools made student placement decisions based on achievement test scores and *teacher recommendations*.⁹⁵

These studies accord with a Department of Education study asking schools to state the extent of influence of various sources such as teachers and principals on the placement of students into "differentiated courses"

91. *Id.* at 44. Some school administrators claim they avoid talking about tracking to prevent the children and their families from being emotionally affected by the labeling. *Id.*

92. *Id.* at 66. This cultural allocation, in turn, has been related to student attitudes in the different track levels. *Id.* at 202. Individuals in high-track classes usually have higher academic and general aspirations and positive outlooks, whereas students in low-track groups reported lower aspirations and extremely negative perceptions of themselves. *Id.* at 202-03.

93. NAT'L CTR. FOR EDUC. STATISTICS, U.S. DEP'T OF EDUC., CIRCULAR DIFFERENTIATION IN PUBLIC HIGH SCHOOLS 30 (1994), <http://nces.ed.gov/pubs95/95360.pdf>.

94. Carolyn Riehl et al., *Rites and Wrongs: Institutional Explanations for the Student Course-Scheduling Process in Urban High Schools*, 107 AM. J. EDUC. 116, 140-41 (1999).

95. Jeannie Oakes & Gretchen Guiton, *Matchmaking: The Dynamics of High School Tracking Decisions*, 32 AM. EDUC. RES. J. 3, 10 (1995).

(i.e., tracking).⁹⁶ For each source, the “extent of influence” ranges were “none,” “small extent,” “moderate extent,” and “great extent.”⁹⁷ Fifty-seven percent of schools identified teachers’ recommendations, thirty percent identified guidance counselors’ recommendations, nineteen percent identified department heads’ recommendations, and sixteen percent identified principals’ recommendations as “greatly” influencing tracking decisions.⁹⁸ The schools did identify other sources of influence such as students’ performance on standardized tests and in prerequisite courses that presumably are not subject to accent bias.⁹⁹ But track placement is also determined by teachers, guidance counselors, and others who are, as shown by the research studies above, vulnerable to accent bias. These actors, especially teachers, play a large role in determining the track a student is placed on.

b. Teacher Recommendations Can Be Affected by Accent Bias

As one research study noted, “arbitrary and idiosyncratic placement decisions are common, and can be related to . . . students’ ascribed characteristics.”¹⁰⁰ A teacher who places an accented student in a lower track because of accent bias makes an “arbitrary” placement decision based on the student’s “ascribed characteristic” (i.e., accent).¹⁰¹ This is highly possible given the bias findings of accent studies. The 1978 study on accent found that White elementary school teachers rated Black English-speaking fifth-graders as having less academic ability than standard English-speaking fifth-graders.¹⁰² The 1984 study found that teachers rated Spanish-influenced speakers lower than non-Spanish-influenced speakers in various categories including “intelligence,” despite being shown compara-

96. NAT’L CTR. FOR EDUC. STATISTICS, U.S. DEP’T OF EDUC., CURRICULAR DIFFERENTIATION IN PUBLIC HIGH SCHOOLS 10 (1994), <http://nces.ed.gov/pubs95/95360.pdf>.

97. *Id.* at 30.

98. *Id.*

99. *Id.*

100. Roslyn Arlin Mickelson, *When Are Racial Disparities in Education the Result of Racial Discrimination? A Social Science Perspective*, 105 TCHRS. C. REC. 1052, 1064 (2003). Educational placement decisions are particularly significant because they often occur early on and have a cumulative effect. *Id.* at 1063. “[Y]oung students who possess similar social backgrounds and cognitive abilities but who learn in different tracks become more and more academically dissimilar each year they spend in school.” *Id.* When grouping and tracking practices are correlated with race, they lead to racially discriminatory educational results. *Id.* at 1064.

101. *Id.*

102. Debra Kanai DeMeis & Ralph R. Turner, *Effects of Students’ Race, Physical Attractiveness, and Dialect on Teachers’ Evaluations*, 3 CONTEMP. EDUC. PSYCHOL. 77, 84 (1978).

ble written work.¹⁰³ These studies show that educators affected by accent bias can place accented students in lower tracks because they perceive accented students as less intelligent and less academically capable.

Likewise, accented students can be tracked into ESL (English as a Second Language)¹⁰⁴ classes because of accent bias. Those students perceived as English-deficient are placed in ESL classes. But ESL placement mistakes occur when educators misperceive a mere accent as an English-language deficiency and incorrectly place the accented student in an ESL class.¹⁰⁵ As stated by one Hmong senior in a public high school, "They always put Hmong students in ESL, which is racist. My cousin was put in ESL here and he doesn't even need it."¹⁰⁶ Track placement mistakes occur and when they do, they harm students of color.

4. Tracking Limits the Educational Opportunities of Students of Color

Students of color can be harmed in a variety of ways when they are relegated to low-track classes. First, low-track classes offer lower quality educational opportunities.¹⁰⁷ Second, low-track classes effectively label the students as "dumb," resulting in diminished self-esteem.¹⁰⁸ Third, low-track students "tend to have lower aspirations and have their plans for the future frustrated more often."¹⁰⁹ Fourth, low-track students "participate less in extra-curricular activities" and suffer higher dropout rates.¹¹⁰

103. Cecilia E. Ford, *The Influence of Speech Variety on Teachers' Evaluations of Students with Comparable Academic Ability*, 18 TESOL Q. 25, 33 (1984).

104. English as a Second Language (ESL), English Language Learner (ELL), and Limited English Proficient (LEP) are interchangeable terms. *Santamaria v. Dallas Indep. Sch. Dist.*, No. Civ.A.3:06CV692-L, 2006 WL 3350194, at *2 & n.6 (N.D. Tex. Nov. 16, 2006).

105. Stacey J. Lee, *More Than "Model Minorities" or "Delinquents": A Look at Hmong American High School Students*, 71 HARV. EDUC. REV. 505, 505 (2001).

106. *Id.*

107. Kevin G. Welner, *Ability Tracking: What Role for the Courts?*, 163 EDUC. L. REP. 565, 568 (2002).

108. Daniel J. Losen, *Silent Segregation in Our Nation's Schools*, 34 HARV. C.R.-C.L. L. REV. 517, 522 (1999).

109. *Id.*

110. *Id.* Comparative studies of foreign students who were not grouped according to ability show that the foreign students significantly outperform American students who are placed in higher tracks. *Id.* at 521. Although this disparity is not solely a result of tracking, ability-grouping, especially at elementary and middle school levels, is an important factor in the relatively poor performance of American students in areas of math and science. *Id.* Other studies indicate that the benefits of ability-grouping for higher-tracked students is unclear, while the detriments to lower-tracked students is apparent. *Id.* at 521-22.

C. *Accented Students in a Classroom Are Harmed by Accent Bias*

In addition to being denied access to charter schools and high-track classes, accented students can be denied effective classroom teaching. Accent bias within the classroom can impede accented students' educational advancement in three ways. First, teachers do not call on accented students. Second, accented students are given lower grades. Third, they are kept at a distance from non-accented students.

1. Teachers Do Not Call on Accented Students

Teachers might not call on accented students in class because they view these students as less intelligent and with nothing significant to contribute,¹¹¹ or because they wish to avoid embarrassing students with accents.¹¹² In either case, accented students of color are marginalized. They may already be marginalized because of their skin color, and accent bias furthers that marginalization.

Because they are not called on in class, accented students do not talk in class. But allowing students to talk as part of class discussion is vitally important because children who talk learn language and how to talk.¹¹³ Talk is critical because it "helps us make sense of what we read and helps external knowledge become our own."¹¹⁴ Indeed, "oral language provides the foundation for all learning" and "enables . . . young children to express their thinking, which can later be expressed in writing."¹¹⁵ Thus, teachers need to overcome their accent biases in order to ensure that all students reap the full benefits of an education.

Also, teachers need to *actively* seek the participation of accented students, especially because some students with accents are hesitant to talk in class due to fears of ridicule. In one study, Laotian high school students explained that they did not volunteer to read anything in class be-

111. See Cecilia E. Ford, *The Influence of Speech Variety on Teachers' Evaluations of Students with Comparable Academic Ability*, 18 TESOL Q. 25, 33 (1984) (finding that teachers rated students with a Spanish-influenced speech pattern less intelligent than students with a non-Spanish-influenced speech pattern).

112. JUN LIU, *ASIAN STUDENTS' CLASSROOM COMMUNICATION PATTERNS IN U.S. UNIVERSITIES* 196 (2001).

113. DAVID CORSON, *ORAL LANGUAGE ACROSS THE CURRICULUM* 34 (1988).

114. DANLING FU, *MY TROUBLE IS MY ENGLISH: ASIAN STUDENTS AND THE AMERICAN DREAM* 197 (1995). Evidence indicates that students with heavy accents are rarely pushed to interact socially and to share what they have learned. *Id.* at 196–97. Instead, they are often given "lecture or seat work." *Id.* at 196. Thus, they cannot engage in the essential educational practice necessary to become comfortable with the English language. *Id.* at 197.

115. DARLENE LEIDING, *RACIAL BIAS IN THE CLASSROOM: CAN TEACHERS REACH ALL CHILDREN?* 104–05 (2006).

cause they feared not being understood and appearing “dumb” to others.¹¹⁶ In the following account, a Cambodian university student discusses being silent:

When you talk, people kind of look at you and say, “You’ve got a funny pronunciation,” you know, funny accent. And you don’t speak English the way, you know, a West European or American speaks. . . . You have the answer professor asks, you know. Most of the time, they ask questions, they say, raise your hand. You don’t want to raise your hand. You know the answer, what the answer is, but you don’t want to say it.¹¹⁷

Self-silencing occurs, and teachers perpetuate this silence by not calling on accented students or inviting them in a reassuring manner to join the classroom discussion.

A student’s silence furthers a teacher’s perception of the student as less intelligent. American culture associates intelligence with the *content* of a speech (what is said), whereas East Asian cultures, for example, associate intelligence with the *context* of a speech (who the speaker is and the particular setting of the speech).¹¹⁸ Accordingly, in America’s “low-context” culture, one appears more intelligent if one speaks more and effusively, rather than being silent.¹¹⁹

This particular American cultural trait could create within a teacher a self-reinforcing, self-perpetuating misperception of an accented student’s intelligence. First, because of accent bias, the teacher perceives the accented student as less intelligent and will not call on the accented student. Then, in this “low-context” culture, the student’s silence reinforces the teacher’s perception of the accented student as less intelligent. The effect is a silenced student.

2. Accented Students Are Given Lower Grades

Teachers grade a variety of student work including written work and oral presentations. Lower grades for accented students’ *oral presentations* may occur if the teacher’s accent bias is communicated to the accented speaker through nonverbal cues. This causes the accented speaker

116. DANLING FU, *MY TROUBLE IS MY ENGLISH: ASIAN STUDENTS AND THE AMERICAN DREAM* 53 (1995).

117. Peter Nien-chu Kiang, *Issues of Curriculum and Community for First-Generation Asian Americans in College*, in *FIRST-GENERATION STUDENTS: CONFRONTING THE CULTURAL ISSUES* 97, 100 (L. Steven Zwerling & Howard B. London eds., 1992).

118. Heejung S. Kim & Hazel Rose Markus, *Speech and Silence: An Analysis of the Cultural Practice of “Talking,”* in *BEYOND SILENCED VOICES* 181, 187 (Lois Weis & Michelle Fine eds., rev.ed. 2005).

119. *Id.* at 188.

to be nervous and to give a poor oral presentation, which leads to a lower grade.¹²⁰ Or the accent-biased teacher fails to make any effort to understand the student's accented oral presentation, thus causing the teacher to perceive the oral presentation as difficult to comprehend, which also leads to a lower grade.¹²¹

Accent bias may also result in lower grades for *written work*. The 1984 study on accent showed teachers giving lower ratings to elementary students who spoke Spanish-influenced English, despite their written work being comparable to other students' written work.¹²²

The following account shows how issues relating to race can affect grading. A Black woman, Weber-Smith, recounted how she argued with a high school teacher over her creative writing grade.¹²³ She felt the teacher gave her a lower *B* grade because the teacher was uncomfortable with the "radical" content of the paper, which discussed a Black revolutionary's gun pointed at the head of a White person.¹²⁴ The teacher tried to justify the lower grade by asserting that Weber-Smith failed to use a term that accurately reflected the smell of gunpowder.¹²⁵ Weber-Smith felt a one-grade reduction for a purported one-word mistake was unjustified and succeeded in getting her grade changed to an *A*.¹²⁶ Although this example focuses on what was written, whereas accent focuses on how something was said, it is nonetheless helpful in showing that racial bias in grading can and does occur. Accordingly, accent bias as a form of racial bias can result in lower grades for students of color.

3. Accented Students Are Distanced from Their Teachers

Teachers and other school staff members could distance themselves from students with accents. In one 2007 study, subjects who listened to Asian-accented English speakers reported experiencing more "negative affect," which "includes such affective reactions as anxiety, uneasiness, and discomfort."¹²⁷ In another 2007 study, subjects rated the Arab female accent as the least positive under the "Friendly" category and the

120. TARA GOLDSTEIN, *TEACHING AND LEARNING IN A MULTILINGUAL SCHOOL* 116 (2003).

121. *Id.*

122. Cecilia E. Ford, *The Influence of Speech Variety on Teachers' Evaluations of Students with Comparable Academic Ability*, 18 *TESOL Q.* 25, 33 (1984).

123. Carla O'Connor et al., *The Culture of Black Femininity and School Success*, in *BEYOND SILENCED VOICES* 163, 176 (Lois Weis & Michelle Fine eds., rev. ed. 2005).

124. *Id.*

125. *Id.*

126. *Id.*

127. Megumi Hosoda et al., *Listeners' Cognitive and Affective Reactions to English Speakers with Standard American English and Asian Accents*, 104 *PERCEPTUAL & MOTOR SKILLS* 307, 311 (2007).

Arab male and female accents as the least positive under the "Warm" category.¹²⁸ Given these biases, teachers could fail to form close relationships with their accented students.

The following is an example of language differences creating distant teacher-student relationships: a researcher studying Hmong-American high school students was surprised that most of the non-ESL teachers were "largely uneducated" about the Hmong-American students.¹²⁹ The chair of the ESL department at this high school explained that most non-ESL teachers "abdicated responsibility for students they viewed as culturally different."¹³⁰ Many Hmong-American students, in turn, were quiet in class not because they did not know English, but because they felt their peers and teachers did not value their ideas.¹³¹

But a close teacher-student relationship helps students excel. A student's *relation* with teachers and other school personnel is critically important to school success.¹³² The existence of a "connection" between student and teacher affects the student's potential to achieve.¹³³ Close, supportive student-teacher relationships "contribute significantly, not only to students' social-emotional health and well-being, but also to their academic performance," according to one school of education dean.¹³⁴ Accent bias that produces distant teacher-student relationships is detrimental to the academic success of accented students of color.

4. Accented Students Are Made to Question Their Identity

One Guyanese-American stated, "Accent was very much tied up with identity for me, and for those first two years in America [accent was] a constant source of frustration."¹³⁵ He further expressed, "Even [my

128. Selim Ben Said, *The Perception of Arab-Accented Speech by American Native Speakers and Non-Native Speakers from East and South-East Asia*, in PERSPECTIVES ON ARABIC LINGUISTICS XXI: PAPERS FROM THE TWENTY-FIRST ANNUAL SYMPOSIUM ON ARABIC LINGUISTICS 149, 161 (Dilworth B. Parkinson ed., 2007).

129. Stacey J. Lee, *Learning About Race, Learning About "America": Hmong American High School Students*, in BEYOND SILENCED VOICES 133, 137 (Lois Weis & Michelle Fine eds., rev. ed. 2005) (stating that the purpose of the study was to explore "how ideas about race, particularly as they are expressed in teachers' racialized constructions of students, inform the school experience of second-generation Southeast Asian[-]American students").

130. *Id.* at 138.

131. *Id.* at 143.

132. Angela Valenzuela, *Subtractive Schooling, Caring Relations, and Social Capital in the Schooling of U.S.-Mexican Youth*, in BEYOND SILENCED VOICES 83, 91 (Lois Weis & Michelle Fine eds., rev. ed. 2005).

133. *Id.*

134. Deborah Stipek, *Relationships Matter*, 64 EDUC. LEADERSHIP 46, 48-49 (2006).

135. Damon Roberts, *Accent*, in TESTIMONY: YOUNG AFRICAN-AMERICANS ON SELF-DISCOVERY AND BLACK IDENTITY 149, 149 (1995).

friends] would stand around and laugh at my accent.”¹³⁶ One Latina writer declared, “Ethnic identity is twin skin to linguistic identity—I am my language. Until I take pride in my language, I cannot take pride in myself.”¹³⁷

Accent bias can diminish a student’s pride. Accent-biased educators can, consciously or unconsciously, signal to accented students their displeasure or frustration with accented speech, as in the case of a teacher listening to a question or response from an accented student with “the pained expression of intense concentration complete with furrowed brows.”¹³⁸ Students then internalize the projected negative characteristics associated with their accents.¹³⁹

This can be avoided if teachers recognize the importance of language to a student’s identity. Some teachers, though, fixate on their students learning “proper” English. These teachers might even think they are acting in the best interest of their students. As one teacher asserted:

They need to learn English and speaking Spanish will just hold them back. I have their best interests at heart when I tell them to talk in English and I try and integrate them . . . split them up from their friends . . . force them to speak English . . . because that’s the only way they will ever get ahead.¹⁴⁰

This reveals how wide a gap can exist between what educators believe is important for students of color (learning proper English) versus what students of color believe is important for themselves (having pride in one’s language).

IV. REMEDYING ACCENT BIAS IN EDUCATION

Accent bias in education needs to be eliminated to provide students of color full access to all educational opportunities. Remedying the accent bias problem can involve litigation solutions. Other solutions range from using teaching techniques that specifically help accented students to

136. *Id.* at 152.

137. Gloria Anzaldúa, *Linguistic Terrorism*, in *TONGUE-TIED: THE LIVES OF MULTILINGUAL CHILDREN IN PUBLIC EDUCATION* 270, 271 (2004).

138. Ray Lou, *Teaching All Students Equally*, in *TEACHING FROM A MULTICULTURAL PERSPECTIVE* 28, 35 n.6 (Peter Labella & Diana E. Axelsen eds., 1994).

139. David Aaron DeSoto, Note, *Ending the Conquest Won Through Institutionalized Racism in Our Schools: Multicultural Curricula and the Right to an Equal Education*, 1 *HISP. L.J.* 77, 80 (1994). As a result, accent may be a contributing factor to a minority student’s declining self-esteem. *Id.* “By forcing upper-class Anglo-American speech on minorities, the schoolhouse becomes a taunting ground for those unfortunate enough to retain an ethnic accent.” *Id.*

140. CATHERINE E. WALSH, *PEDAGOGY AND THE STRUGGLE FOR VOICE: ISSUES OF LANGUAGE, POWER, AND SCHOOLING FOR PUERTO RICANS* 115 (1991).

changing school and societal perceptions of language variations to view accent as a *difference* rather than a *deficiency*.¹⁴¹

A. *Litigation Solutions*

1. A 42 U.S.C. § 1983 Claim

Parents who feel their accented students have been discriminated against in school may seek a federal remedy through a § 1983 claim. Under § 1983, a state actor who "subjects . . . any citizen . . . to the deprivation of any rights . . . secured by the Constitution . . . shall be liable to the party injured"¹⁴² One right secured by the Fourteenth Amendment to the Constitution prohibits state actors from "deny[ing] to any person . . . the equal protection of the laws."¹⁴³ Such a § 1983 claim requires "[p]roof of racially discriminatory intent or purpose."¹⁴⁴ Proof of discriminatory intent or purpose may be shown by direct or circumstantial evidence.¹⁴⁵

In one case involving Latino students tracked into ESL classes, discriminatory intent was shown in a § 1983 claim filed by aggrieved Latino parents against a Texas school principal and others.¹⁴⁶ The Texas court found the elementary school principal violated the Equal Protection Clause of the Fourteenth Amendment when she intentionally assigned Latino students to ESL classes even though they were proficient in English.¹⁴⁷ The principal reserved General Education classes for White children, while assigning English-proficient Latino (and African-American) students to ESL classes in an attempt to stop "[W]hite flight"¹⁴⁸ from the school and to satisfy White parents who wanted their children "grouped together."¹⁴⁹ The court found that the principal unlawfully segregated the Latino students based on race and national origin.¹⁵⁰

Likewise, educators violate § 1983 if they intentionally segregate students of color because of their accents. Educators fail to provide equal

141. Olivia N. Saracho & Bernard Spodek, *The Future Challenge of Linguistic and Cultural Diversity in the Schools*, in MEETING THE CHALLENGE OF LINGUISTIC AND CULTURAL DIVERSITY IN EARLY CHILDHOOD EDUCATION 170, 172-73 (1995).

142. 42 U.S.C. § 1983 (2006).

143. U.S. CONST. amend. XIV, § 1.

144. *Arlington Heights v. Metro. Hous. Dev. Corp.*, 429 U.S. 252, 265-66 (1977).

145. *Id.* at 266.

146. *Santamaria v. Dallas Indep. Sch. Dist.*, No. Civ.A.3:06CV692-L, 2006 WL 3350194, at *1 (N.D. Tex. Nov. 16, 2006).

147. *Id.* at *32, *39.

148. "White flight" refers to the migration of White students in predominately minority schools to private schools. *Id.* at *27.

149. *Id.* at *2, *32.

150. *Id.* at *39.

access to school courses if they assign students to low-track classes merely because they perceive accented students as academically inferior. Such accent-based discrimination could constitute discrimination based on race¹⁵¹ or national origin¹⁵² or both.¹⁵³

2. A 20 U.S.C. § 1703 Claim

Another federal statute, 20 U.S.C. § 1703, prohibits the denial of “equal educational opportunity” to students because of their race or national origin.¹⁵⁴ A school is required to take “appropriate action to overcome *language barriers* that impede equal participation by its students in its instructional programs.”¹⁵⁵ In *Martin Luther King Junior Elementary School Children v. Ann Arbor School District Board*, Black children (and their parents) who spoke “Black English” filed suit against the Ann Arbor School District Board because their school failed to teach them to read standard English.¹⁵⁶ The court stated the Board failed to help teachers both identify the existence of Black English and use that information to effectively teach students to read standard English.¹⁵⁷ According to the court, Black English “is not a barrier to understanding in the classroom. It becomes a language barrier when teachers do not take it into account in teaching standard English.”¹⁵⁸

Similarly, accent itself is not a barrier to understanding in the classroom.¹⁵⁹ Accent becomes a barrier only when teachers fail to take it into

151. Federal regulations define “race” using the following list: Black (not of Hispanic origin), Hispanic, Asian or Pacific Islander, American Indian or Alaskan Native, and White (not of Hispanic origin). 18 C.F.R. § 1302.4(a)(1)-(5) (2006). These identified racial groups include geographical references that may, in turn, be applicable to accent-based discrimination. *Id.* § 1302.4(a).

152. Federal regulation defines “national origin” as the “physical, cultural or *linguistic* characteristics of a national origin group.” 29 C.F.R. § 1606.1 (2008) (emphasis added).

153. OFFICE FOR CIVIL RIGHTS, U.S. DEP’T OF EDUCATION, PROTECTING STUDENTS FROM HARASSMENT AND HATE CRIME: A GUIDE FOR SCHOOLS 17 (1999), <http://www.ed.gov/offices/OCR/archives/Harassment/harassment.pdf>.

154. Equal Educational Opportunities Act of 1974 (EEOA) § 204, 20 U.S.C. § 1703 (2006).

155. *Id.* § 204(f) (emphasis added).

156. 473 F. Supp. 1371, 1372 (E.D. Mich. 1979).

157. *Id.* at 1371.

158. *Id.* at 1382.

159. See Tracey M. Derwing & Murray J. Munro, *Accent, Intelligibility, and Comprehensibility*, 19 STUD. IN SECOND LANGUAGE ACQUISITION 1, 11–12 (1997) (discussing the effects of accents on speakers’ comprehensibility). This experiment tested the comprehensibility to native English speakers of ESL students who spoke Cantonese, Japanese, Polish, and Spanish. *Id.* at 1. “The results [of the experiment] provide . . . evidence in support of the claim that, although some features of accent may be highly salient, they do not necessarily interfere with intelligibility. *Id.* at 11.

account when they teach.¹⁶⁰ This failure to take accent into account can lead to a curriculum that fails to recognize the needs and concerns of accented students, thereby impeding the ability of accented students to fully participate in class. Accordingly, a school denies "equal educational opportunity" to students of color when it fails to take action to overcome language barriers created by accent bias that impede students' "equal participation" in school programs.¹⁶¹

B. Other Solutions

The problem with the litigation solutions above is that they come into play *after* accent discrimination occurs. A better situation is one where accent discrimination does not occur at all. The proposed solutions below attempt to prevent accent bias from occurring in the first place.

1. Using Teaching Practices That Overcome Accent Barriers

Teachers can begin to overcome accent bias by being intentional about using teaching methods that include accented students in classroom activities. For example, a teacher could begin the school year by telling the class that everyone has a unique background and that everyone's uniqueness is a positive contribution to class.¹⁶² This approach prepares students to accept all forms of diversity, including accent diversity.

Second, as the school year begins, a teacher could systematically call on students by recording those already called upon and then calling on the remaining students. This ensures that all students, including accented students, are given an equal chance to contribute.¹⁶³

Third, a teacher could supplement an accented student's oral presentation with a handout if the teacher fears other students might have difficulty understanding the student's accent. In one case, a teacher used to read the current event reports written by a Laotian student until the student volunteered to read them.¹⁶⁴ During the student's readings, he gave

160. See Evelyn B. Freeman, *The Ann Arbor Decision: The Importance of Teachers' Attitudes Toward Language*, 83 *ELEMENTARY SCH. J.* 40, 46 (1982) (finding that a teacher's attitude about language can impair a student's development).

161. See Equal Educational Opportunities Act of 1974 § 204(f), 20 U.S.C. § 1703(f) (2006) (requiring that education institutions provide equal educational opportunities to all students).

162. See Ray Lou, *Teaching All Students Equally*, in *TEACHING FROM A MULTICULTURAL PERSPECTIVE* 28, 38 n.6 (Peter Labelle & Diana E. Axelsen eds., 1994) (discussing the positive effect that a teacher may have on students).

163. See *id.* at 36 (arguing that students who feel more confident are more likely to excel).

164. DANLING FU, *MY TROUBLE IS MY ENGLISH: ASIAN STUDENTS AND THE AMERICAN DREAM* 53 (1995).

copies of what he read to the class to avoid any misunderstandings based on language differences.¹⁶⁵ Because he was allowed to read in class, the student reported that he “felt good about himself.”¹⁶⁶

Fourth, a teacher could provide opportunities for “students to evaluate the class informally.”¹⁶⁷ One teacher offers evaluation opportunities through “group discussion and report” or through “student written commentary.”¹⁶⁸ Such opportunities would allow accented students a chance to directly inform the teacher of those teaching methods that do or do not meet their needs.¹⁶⁹

2. Instituting Anti-Accent Bias Teacher Training Programs

The responsibility for ending accent bias must extend beyond the individual teacher to schools generally because “change happens at the level of the school.”¹⁷⁰ In fact, change agents should extend further to include school districts and beyond. After all, if racial bias occurs at the individual and institutional levels,¹⁷¹ solutions should be sought at the individual and institutional levels. Accordingly, schools (and school districts) should incorporate anti-accent bias training into teacher education and professional development programs.¹⁷² These training programs would help teachers understand that they can be influenced not just by *what* a student says, but by *how* a student says it.¹⁷³ These training programs could be broadened to include guidance counselors, principals, and others in the field of education. Such training would provide educators the tools

165. *Id.* at 54.

166. *Id.*

167. Ann M. Johns, *Language and Cultures in the Classroom*, in *TEACHING FROM A MULTICULTURAL PERSPECTIVE* 60, 62 (Peter Labella & Diana E. Axelsen eds., 1994). “This practice is especially useful for those students whose cultures prohibit open criticism of . . . classroom practices.” *Id.*

168. *Id.*

169. *Id.* Students may also want to explain to teachers to what they credit their successes and failures in the class. *Id.*

170. Renée Blake & Cecilia Cutler, *AAE and Variation in Teachers’ Attitudes: A Question of School Philosophy?*, 14 *LINGUISTICS & EDUC.* 163, 189 (2003).

171. Lindsay Perez Huber, *Naming Racism: A Conceptual Look at Internalized Racism in U.S. Schools*, 26 *CHICANO-LATINO L. REV.* 183, 184 (2006).

172. Josie Foehrenbach Brown, *Escaping the Circle by Confronting Classroom Stereotyping: A Step Toward Equality in the Daily Educational Experience of Children of Color*, 11 *ASIAN L.J.* 216, 231 (2004).

173. Robert C. Granger et al., *Teacher Judgments of the Communication Effectiveness of Children Using Different Speech Patterns* 6–7 (Apr. 1977) (paper presented at the Annual Meeting of the American Educational Research Association), available at http://www.eric.ed.gov/ERICDocs/data/ericdocs2sq1/content_storage_01/00000196/80/39/d9/17.pdf.

needed to remove racial obstacles such as accent bias encountered by students of color.¹⁷⁴

There is a need for such training because educators are affected by external influences that shape their views and attitudes. For example, external world events can shape an educator's views and attitude. In one situation where a public school teacher tried to form an Arab youth group in 2003 (two years after the September 11 attacks on the World Trade Center and the Pentagon), another teacher exclaimed, "Why are you sponsoring the Arabs? They are the same as the Ku Klux Klan."¹⁷⁵ One teacher speaking to another teacher remarked about Palestinian students, "They really do just raise them all up to be suicide bombers."¹⁷⁶ One Palestinian-American student recounted how her history teacher engaged in a one-sided discussion of the Palestinian-Israeli conflict by stating that Palestine did not exist and that the Palestinians were "happy . . . [to run] in front of a tank and get[] run over."¹⁷⁷

Such views and attitudes created by external world events can lead to accent bias. In one 1994 study in which the subjects rated the Arabic accent lower than Spanish or German accents, the researchers suggested that (then) recent world events, including the (First) 1990-91 Gulf War and the 1993 bombing of the New York City World Trade Center, contributed to the study results.¹⁷⁸ Given the potential for bias among educators, professional education programs that address bias are not useless, "touchy-feely" gatherings, but rather necessary tools for professional development for educators that ultimately benefit students of color.¹⁷⁹

3. Drafting School Policies That Prohibit Accent Discrimination

Schools and school districts could draft anti-harassment policies that specifically prohibit accent discrimination. An example is Vermont's department of education anti-harassment policy, which defines "racial har-

174. Josie Foehrenbach Brown, *Escaping the Circle by Confronting Classroom Stereotyping: A Step Toward Equality in the Daily Educational Experience of Children of Color*, 11 ASIAN L.J. 216, 231 (2004).

175. Thea Renda Abu El-Haj, *Global Politics, Dissent, and Palestinian American Identities*, in BEYOND SILENCED VOICES 199, 199 (Lois Weis & Michelle Fine eds., rev. ed. 2005).

176. *Id.* at 202.

177. *Id.* at 210.

178. Ruth Johnson & Frederick L. Jenks, Native Speakers' Perceptions of Nonnative Speakers: Related to Phonetic Errors and Spoken Grammatical Errors 25-26 (Mar. 1994) (paper presented at the Annual Meeting of the Teachers of English to Speakers of Other Languages), available at http://www.eric.ed.gov:80/ERICDocs/data/ericdocs2sql/content_storage_01/0000019b/80/15/cd/33.pdf.

179. Carwina Weng, *Multicultural Lawyering: Teaching Psychology to Develop Cultural Self-Awareness*, 11 CLINICAL L. REV. 369, 401 (2005).

assment” to include conduct directed at a student’s “manner of speech.”¹⁸⁰ The Albuquerque public schools prohibit the harassment of students with a “foreign accent.”¹⁸¹ Bates Technical College in Washington State prohibits racial harassment including harassment of students because they have a “foreign accent.”¹⁸² The Omak School District in Washington State prohibits racial harassment and explains that such harassment may be experienced by “those who have an accent.”¹⁸³

Admissions policies for charter schools can also be drafted to prohibit accent bias. For example, Oklahoma and Arizona statutes state that “a charter school shall not limit admission based on *national origin* or *proficiency in the English language*.”¹⁸⁴ Other states can enact similar statutes. Doing so will open more school doors for accented students of color.

4. Re-Perceiving Accent

Teachers, schools, and school districts should reassess their perceptions of accent. In doing so, they would view accent not as a language deficiency, but as another feature of racial and ethnic diversity. They would view accent variation not as a problem to solve, but as an opportunity to teach. A goal of educators should be to empower students, but this is unlikely if educators view their role as “replacing or subtracting students’ primary language and culture in the process of assimilating them to the dominant culture.”¹⁸⁵ Rather, educators should adopt language philosophies that are open to language diversity and attuned to the needs of non-standard English-speaking students.¹⁸⁶

V. CONCLUSION

Educators play a central role in the lives of students. As one Latino high school student recounted: “I wanted to be a zoologist. I like ani-

180. Vermont Department of Education Policy on Prevention of Harassment of Students 2, http://education.vermont.gov/new/pdffdoc/resources/educ_model_harassment.pdf.

181. Sexual Discrimination and Harassment, <http://www.aps.edu/aps/policy/Directives/DISCRHARASSSTUDENTS.html> (last visited Dec. 7, 2009).

182. WASH. ADMIN. CODE § 495A-121-011(17)(a) (2009). The protection extends even to demeaning racial jokes and negative remarks. *Id.* § 495A-121-011(17)(d).

183. Omak School District Board Policy, www.omaksd.wednet.edu/documents/6591BP.pdf (last visited Dec. 7, 2009).

184. ARIZ. REV. STAT. ANN. § 15-184(B) (2009) (emphasis added); OKLA. STAT. tit. 70, § 3-140(D) (2009) (emphasis added).

185. CATHERINE E. WALSH, *PEDAGOGY AND THE STRUGGLE FOR VOICE: ISSUES OF LANGUAGE, POWER, AND SCHOOLING FOR PUERTO RICANS* 110 (1991) (addressing how incorporating racial and ethnic diversity of a student in the school curriculum “can contribute to the empowerment of students”).

186. Renée Blake & Cecilia Cutler, *AAE and Variation in Teachers’ Attitudes: A Question of School Philosophy?*, 14 *LINGUISTICS & EDUC.* 163, 189 (2003).

mals. But I have one science course. My counselor told me I didn't need any more science. Instead I took typing to graduate."¹⁸⁷ In one instant, a few words from a guidance counselor drastically changed the trajectory of this student's career. It is indeed true that guidance counselors, teachers, and other school personnel are essentially "gatekeepers" who control what types of educational opportunities are available to students.¹⁸⁸ For students of color, the path through the gates is difficult because they face numerous obstacles. It is unlikely that all of these obstacles will be eliminated in one fell swoop. What is more likely is the removal of these obstacles one at a time. Removing the accent bias obstacle is a step in the right direction toward ensuring educational equality for all students.

187. Pamela Anne Quiroz, *The Silencing of Latino Student "Voice": Puerto Rican and Mexican Narratives in Eighth Grade and High School*, 32 *ANTHROPOLOGY & EDUC. Q.* 326, 343 (2001).

188. Josie Foehrenbach Brown, *Escaping the Circle by Confronting Classroom Stereotyping: A Step Toward Equality in the Daily Educational Experience of Children of Color*, 11 *ASIAN L.J.* 216, 225 (2004). "Minority students are more frequently directed into low academic tracks or ability groups, thereby impeding their access to better curricular content." *Id.* at 225.